

TESTIMONY OF ELISA MASSIMINO

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HEARING ON

**“MONITORING RESPECT FOR HUMAN RIGHTS
AROUND THE WORLD: A REVIEW OF THE
COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2005”**

before the

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON INTERNATIONAL RELATIONS
SUBCOMMITTEE ON AFRICA,
GLOBAL HUMAN RIGHTS AND INTERNATIONAL OPERATIONS**

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I. Introduction

Chairman Smith and members of the Committee, thank you for convening this hearing and for the opportunity to share our perspective on the State Department's Country Reports this year. We are extremely grateful to you, Chairman Smith, for your many years of leadership in this area. You and your staff have a seemingly inexhaustible source of energy for pressing abusive governments to respect the inherent dignity and human rights of their people. Human rights advocates around the world enjoy no better ally than you in their struggle to make these rights a reality.

My name is Elisa Massimino. I am the Washington Director of Human Rights First. Since 1978, Human Rights First has worked to protect and promote fundamental human rights, holding all governments — including our own — accountable to the standards contained in the Universal Declaration of Human Rights and related international human rights instruments. Human Rights First's mission is rooted in the premise that the world's security and stability depend on respect for human dignity and the rule of law in every part of the world.

Production of the annual Country Reports is an enormous undertaking. Detailed instructions go out to U.S. diplomats and State Department employees in Washington and around the world outlining the many areas of substantive focus on which comprehensive information must be submitted for inclusion in the Reports, which this year covers 196 countries. I want to commend the hundreds of State Department and foreign service personnel who participated in this effort for their professionalism and diligence in the production of these reports. We have appreciated the degree to which the Country Reports team at the State Department has welcomed our input on the Reports over the years. Likewise, we have been encouraged that the Reports reflect increasing consultations by U.S. embassy staff with local human rights advocates and NGOs. We welcome the opportunity presented by today's hearing to offer our perspective on how the Reports can be strengthened and improved.

II. Why the Country Reports are Important

As you know, the quality and accuracy of the Country Reports have been a focus of attention for Human Rights First since the Department of State was first mandated to present the Reports to Congress 30 years ago. The Reports are intended to assist Congress in the performance of its oversight function of the foreign relations of the United States. In the preparation of the Reports, the aim is to assess the performance of international partners and adversaries alike in accord with a common baseline.

That baseline is human rights. The standards applied are those enshrined in the Universal Declaration of Human Rights and the various treaties and conventions which implement the Declaration, along with broader international standards of human rights, humanitarian, refugee and labor law recognized by the United States and most of the world's governments.

For eighteen years, Human Rights First produced an annual critique of the State Department Reports, beginning with the third annual report in 1978. After publishing our 1996 report, we made a decision to stop producing the critique. In our judgment, the Reports had become a progressively more thorough and reliable guide to human rights conditions throughout

the world and no longer required the kind of detailed analysis we had devoted to them for so many years. We continue to comment yearly on specific shortcomings in the reporting on individual countries, and offer more extensive comments when we believe there is a need for broad or structural improvements. We believe that the Reports require and benefit from critical input by the non-governmental human rights community.

In addition to the importance of the Reports to Congress, governments and rights advocates around the world eagerly await their publication each year. Obviously, no government – including our own – relishes public criticism. And a few governments, including China and Russia, routinely attempt to discredit the Reports as an exercise in imperialism from an imperfect country. But the eagerness with which citizens of those countries await the reports as a tool to aid in their struggle to secure respect for rights from their own governments belies these claims. It also underscores how critical it is that the Reports be as objective and accurate as possible. The value of the Country Reports as a baseline for foreign policy decision-making is directly proportional to their objectivity. Flinching from the truth not only does a disservice to Congress, which relies on the Reports in formulating and overseeing foreign policy and bilateral assistance arrangements, but undermines the usefulness of the Reports to human rights advocates abroad, fueling claims by offending governments that the Reports are politically motivated and should be dismissed.

Ensuring that the Reports actually play a role in guiding U.S. foreign policy has always been a challenge, particularly when the Reports are unflinching in their criticism of U.S. allies. When there is an obvious discrepancy between the message delivered by the Reports and U.S. policy toward governments that have been identified in the Reports as serious human rights violators, it conveys the impression that candor on human rights is the function of one small part of the foreign policy bureaucracy – the Bureau of Democracy, Human Rights and Labor (DRL) – and not necessarily of the Administration as whole. This can damage broader U.S. interests, if the Bureau's voice is seen to be marginalized, and if abusive governments conclude that human rights are a fringe concern of the Administration that is not echoed and reinforced by other, more influential parts of the U.S. Government.

This is a serious policy challenge, and its solution lies well beyond the scope of the Country Reports themselves. But that challenge will be made much greater if the Reports begin to slip back into the pattern of political bias that characterized their early years.

III. Country-Specific Observations

A. Russia and China

On two of the most important countries – Russia and China – this year's Reports hit a home run. Both reports are very strong, appropriately so, and constitute an improvement over last year's reporting. Not surprisingly, Russia and China have both publicly denounced their respective Reports, although their arguments appear to be more focused on imperfections in the U.S. record on human rights, rather than disputing the facts about their own significant shortcomings contained in this year's Country Reports.

Last year, we made a number of recommendations for improvement of the reporting on Russia. One of those recommendations was that the Report highlight violations up front, in the overview section. This year's Report does just that. There is also a good deal more included in

the Report on violations that occurred in the context of the conflict in Chechnya. The volume and detail of reporting on violations in Chechnya is an important improvement, and there is a greater willingness in the Report to attribute violations directly to government forces. In addition, the Report creates new categories, including “Political Prisoners” within the section on fair trials. Last year we noted that reporting on the cases of some human rights defenders fell short. In particular, we recommended that one defense lawyer, Mikhail Trepashkin, be labeled as a political prisoner. In this year’s Report, Trepashkin is included in the new section on Political Prisoners.

The Report on China’s human rights record likewise is particularly strong. Labeled in the Introduction to the Reports as one of “the world’s most systematic human rights violators,” China’s deteriorating human rights record, including increasingly violent crackdowns on those seeking redress of grievances, the use of torture and coerced confessions, incommunicado pre-trial and psychiatric detention, and continued persecution of religious believers, is examined in great detail. In years past, the Country Report on China was the target of substantial criticism by NGOs and others for its equivocation and “glass-half-full” approach. For its forthrightness, comprehensiveness, and willingness to attribute violations to government actors, this year’s Report on China is worthy of emulation in other chapters of the Reports.

B. Colombia

The 2005 Report on Colombia, like that of the previous year, begins with an overview that provides an overly optimistic assessment of human rights progress before presenting a litany of facts from which to conclude otherwise. The overview largely omits discussion of the armed forces from its summary of human rights issues, apart from a reference to “improvements in certain human rights categories related to the government’s concentrated military offensive and ongoing demobilization of paramilitary groups” Human rights violations are ascribed primarily to independent paramilitary forces and to left-wing guerrilla movements – together termed “illegal armed groups.”

This overview contrasts with the Report’s listing of just some of the atrocities attributed to military forces across the country during the year. Units cited in the Report as implicated in extrajudicial killings in 2005 include the Army’s 11th Brigade (San José de Apartadó, Antioquia), 17th Brigade (Choco), Battalion 21 Vargas (Castillo, Meta), Santander Battalion (Aguachica, Cesar), and the Second Division (Cocito Macagua, Arauca). The Army’s Mobile Brigade was named as implicated in torture (Cartagena de Chaira, Caqueta). The direct involvement of regular troops in atrocities, as well as army collusion with paramilitary forces, emerges strongly from the recitation of the facts, but there is little effort in the Report to connect these dots into a fuller picture of the military’s continued role in human rights abuses.

Similarly, in an important section under violations of humanitarian law, the Report acknowledges that *members* of the security forces, “including enlisted personnel, non-commissioned officers, and senior officers collaborated with or tolerated the activities of illegal paramilitaries.” Evidence was cited that this occurred with impunity and extended to “tacit nonaggression pacts” in certain regions, including eastern Antioquia, Choco, and Meta Departments, indicating that “members of the security forces actively assisted or sought the assistance of paramilitary groups.” The military command structure in these regions is not addressed.

The Report also acknowledges that those who investigate or publicize military abuses, including civilian prosecutors and human rights activists, continue to be targeted for murder.

One two-line paragraph offers the Colombian Commission of Jurists' statistic that 38 human rights defenders were killed and three "disappeared" during the year, but without reference to credible evidence of military involvement.

In March, the Report notes, a commission to investigate the massacre and dismemberment of eight civilians, including three children, in San Jose Apartado, Antioquia, was ambushed "with mortar shells and machine gun fire." Members of the police escort of the team from the offices of the prosecutor general and human rights ombudsman were killed. Community members had attributed the massacre to the military; the Army said guerrillas were responsible.

The Report's writers excelled in collating reports on incidents but fell flat discerning meaning in what they reported. The analysis, largely limited to the overview, distorts the information provided and disregards the gaping hole in the reporting concerning armed forces doctrine, operations, and chain of command responsibility for ongoing abuses.

The Report's case-by-case follow-up on abuses cited in past reports suggests the armed forces continue to stand firm in blocking measures to hold officers, soldiers, and paramilitary auxiliaries accountable for torture, murder, and "disappearance." But the overview disregards the sum of the Report's parts to present a picture in which the institutional military role is concealed—or misrepresented as the actions of subordinates in violation of state policy.

A summary statement on abuses by the government's regular forces does not distinguish the military from the police: "While civilian authorities generally maintained effective control of the security forces, there were instances in which elements of the security forces acted in violation of state policy." The overview makes no express reference to military involvement in extrajudicial killings, "disappearances," or torture. The military dimension emerges only as fragments in the thicket of incident reports in the body of the Report.

The overview's failure to address military abuses contrasts with the January 2006 report of the U.N. High Commissioner for Human Rights on the situation of human rights in Colombia. That report noted an increase in allegations of extrajudicial executions attributed to members of the security forces, "particularly the army." These incidents were reported especially in the departments of Antioquia, Choco, Norte de Santander, and the Sierra Nevada de Santa Marta region, with authorities representing most of the reported executions as "deaths of guerrillas in combat."

The U.N. report adds further that the combination of the reported acts, official denials, and the absence of sanctions can be read as potential evidence of the responsibility of higher authorities. This argument for command responsibility was buttressed, according to the report, by the findings of investigations by public prosecutors into similar cases the previous year.

C. Egypt

In general, the Egypt Report is comprehensive and balanced. There is particularly strong coverage of the limitations of the presidential election and the intimidation of the non-violent political opposition through use of violence against peaceful demonstrations.

In light of the Report's emphasis on the inadequacies of the elections, however, it is puzzling that the Report fails to criticize the detention, prosecution and conviction of opposition political leader Ayman Nour. It reports on the charges against him of forging proxy signatures

on his party's registration papers, without comment, although many independent observers have doubted the validity of these charges, and ascribes allegations that Nour was beaten at the time of his arrest to named Egyptian human rights organizations, rather than condemning these apparent violations in its own voice. This contrasts with a strong statement issued from the White House press office on December 24, 2005: "The United States is deeply troubled by the conviction today of Egyptian politician Ayman Nour by an Egyptian court. The conviction of Mr. Nour, the runner-up in Egypt's 2005 presidential elections, calls into question Egypt's commitment to democracy, freedom, and the rule of law."

It is odd that this critical tone, repeated in comments by Secretary Rice and others, is not apparent in the Reports' description of the case.

This year's Report omitted an important observation, contained in last year's Report, with respect to the impact of trying civilians before military courts: "In 1993, the Supreme Constitutional Court ruled that the President may invoke the Emergency Law to refer any crime to a military court. The 1993 ruling in effect removed hundreds of civilian defendants from the normal process of trial by a civilian judge." This omission is consistent with a pattern of minimizing direct criticism of the use of military courts to try civilians that has developed since the United States declared its intention to try suspected terrorists before military tribunals.

D. Indonesia

The Report is a fairly complete listing of events from 2005. As in years past, however, there is a failure to evaluate these events in the voice of the Report, or sometimes even to cite widely available criticism from credible sources. For example, there is a detailed accounting of all the acquittals from the East Timor trials in Jakarta, but no mention of the fundamental weaknesses of the process or a citation of critics such as the U.N. Commission of Experts that found it "manifestly inadequate."

While the discussion of police abuses is fairly extensive, there is no mention in this context of Detachment 88, a police anti-terrorism unit created and operated with extensive U.S. support. One respected Indonesian NGO reported this year on numerous cases of arbitrary detention and torture by this unit. The Report mentions one of the more prominent cases of abuse, but does not identify Detachment 88 as the perpetrator.

While the Report does note military responsibility for killings, rapes, and other abuses, there are several major cases (such as student killings from 1998 and 1999) where the military is not mentioned as the suspected perpetrator. This seems especially significant in light of the decision last year by the United States to lift restrictions on U.S. military cooperation with the Indonesian military.

Description of the radical Muslim group Front Perjuangan Islam/Islamic Defenders Front never mentions that the group is widely believed to have links to police and military. One Human Rights First researcher recently witnessed members of this group being transported on army helicopters in Aceh.

IV. Blind Spots

The Country Reports are the flagship publications of the DRL and have earned worldwide respect for their integrity. They have come to be important indicators of the United

States' commitment to human rights standards at a time when slippage in human rights observance will have global consequences. Any loss of credibility in its reporting and evaluation of human rights practices abroad will inevitably be taken as a wavering in those commitments.

This is why, despite the general strength of the Reports, we have been particularly attuned to any inaccuracies or omissions that could be construed as reflecting political bias. Over the last several years, we have focused on whether the Reports tend to mute criticism of abuses by foreign governments, particularly where the United States has argued that – or acted as if – it is not bound by the human rights norms prohibiting such abuses. As the United States has become increasingly identified with selective observation of international human rights treaties to which it is bound – a pattern that has resulted in serious abuses of human rights – other governments have been emboldened to do the same, and to do so more brazenly. A growing number of governments co-opt the U.S. war on terrorism, citing support for U.S. counterterrorism policies as a basis for internal repression of domestic opponents and violations of human rights. In some instances, U.S. actions have encouraged other countries to disregard domestic and international law when such protections stand in the way of counterterrorism efforts.

Few dispute that such policies have damaged the moral authority of the United States to press other governments to respect the human rights of their own people. And that is bad news for the cause of human rights. Victims of human rights abuses in many corners of the world have long looked to the United States as an ally in their struggle against oppression. When the United States is hobbled by charges of hypocrisy, it cannot lead.

A. Past Instruction to Omit Certain Abuses

In 2002, Human Rights First learned that the 92-page guidelines issued to drafters of the Reports included a new instruction that risked introducing political factors into the human rights criteria that form the framework for Report writers. The new instruction stated: “Actions by governments taken at the request of the United States or with the expressed support of the United States should not be included in the report.”

We were concerned that this new instruction may have been designed to blackout violations committed in the context of joint counterterrorism operations with the United States. We feared it would undermine the objectivity and comprehensiveness of the Reports. Following publication of the Reports in 2003, we issued a report which examined the impact of the new instruction, and assessed the objectivity of the Reports, particularly with respect to U.S. allies in the “war on terrorism.”

Our findings were mixed. There were clear examples of places where the Reports flinched from reporting on abuses in countries in which the United States is deeply involved in military and security operations. And there seemed to be a subtle new bias coloring some of the Reports against frank reporting on measures taken to combat terrorism that have had repercussions for human rights. But the title of our report, *Holding the Line*, reflected our judgment that, on the whole, the Reports that year generally maintained the high standards of accuracy and truthfulness in coverage of the majority of countries and subject areas, despite some notable exceptions.

Following publication of the Reports in 2003, we welcomed the assurance by DRL that the instruction not to report on actions taken at the request of or with the support of the United

States would not be included in the 2003 guidelines. We have not seen the guidelines issued since that time, despite our repeated requests to see them. We urge this Committee to ask to review these instructions with a view toward ensuring that no such instruction has crept back into the guidelines. A substantial blind spot in this year's otherwise strong Reports raises questions about whether the instruction to ignore actions encouraged or directed by the United States continues to skew reporting.

B. Secret Detention, Abduction, and “Rendition”

The accurate and largely comprehensive coverage of the Reports this year falls short in one major respect: its coverage of what the 2002 guidelines described as actions taken at the request or with the expressed support of the United States, a guideline that was reportedly dropped in 2003.

Nowhere is that trend more evident than in the Reports' treatment of the practice of arbitrary and secret detentions, and of “rendering” individuals to countries where they are likely to face torture. When it comes to such practices pursued by other countries at the request or with the expressed support of the United States, the Reports fail to tell the full story. Today, there are credible reports, involving more than a dozen European countries, that U.S. government agents carried out abductions and secret detentions there, and used European airports for secret and illegal transfers of detainees to third countries where they were at risk of torture. At the same time, countries that the United States has long identified as routinely engaging in torture have become destination sites for prisoners transferred from U.S. custody (or with U.S. involvement) for detention.

Our initial review of the Reports reveals a number of omissions regarding secret detentions and renditions. The danger of such omissions for U.S. policy is clear. Not only does the United States through its own actions undermine the vitality of the human rights rules it seeks to advance elsewhere, but it creates an internationally known double standard that angers enemies and allies alike, and compromises U.S. efforts to secure cooperation on its most important policy goals – including the protection of U.S. national security.

In Europe, concern over reports of secret detention centers, abductions, and illegal transfers of detainees by or with the assistance of the United States to sites in which the individual was in danger of torture have led to judicial inquiries in Germany, Italy, Spain, and Switzerland, and official inquiries in at least 10 other countries. An investigation by the Council of Europe focused on allegations of secret detention sites in Europe and complicity of European states in abductions and “renditions” – the secret and illegal transfers of prisoners to third countries where they are likely to face torture. In addition to information from nongovernmental organizations, this investigation cited a widely publicized fax from Egyptian diplomats, intercepted by the Swiss intelligence services, which confirmed that secret detention centers existed in Romania, Bulgaria, Macedonia, Kosovo, and Ukraine.

In light of this extensive record, the Reports on these countries should have reflected, at a minimum, instances in which official measures have been taken to address the claims. They should also have noted other instances in which credible documentation exists for secret detention facilities – in Europe, Southeast Asia, and the Middle East – run by or at the behest of the United States. But the Reports, which ordinarily would encompass such allegations under

the headings of arbitrary arrest and detention, torture, “disappearance” and refugee protection, failed to acknowledge them at all.

For example:

- The uproar in Italy over the kidnapping and smuggling out of the country of foreign citizens, destined for countries where torture could be expected, was omitted. Criminal proceedings were brought against the U.S. agents alleged responsible after the violent kidnapping of Egyptian citizen Hassam Osama Mustafa Nasr, known as Abu Omar, in a Milan street in February 2003. The detainee was taken from a military airbase in Italy, to Ramstein Airbase in Germany, and then to Egypt, where he was reportedly tortured, released, and then rearrested. The chapter on Italy makes no mention of this.
- In Germany, the gap in reporting concerns both secret transfers of prisoners to U.S. detention centers and to the custody of governments that routinely practice torture, and evidence that German government personnel may have been involved—violating Germany’s obligations under the Convention Against Torture as well as its laws against secret detentions and expulsions. A judicial inquiry into the case of a German citizen of Lebanese origin, Khaled Al-Masri, who was seized in Macedonia, transferred to U.S. facilities in Afghanistan, and subsequently released, is examining claims that German intelligence agents were complicit in his interrogation under torture.
- In Norway, official inquiries were reported into the landing in Oslo on July 20 of an aircraft alleged to have been used by U.S. authorities to transport detainees to unknown destinations. But no mention was made of it in the Norway chapter of the Reports.
- In Poland and Romania, national debates and inquiries emerged in 2005 into reports of secret detention and interrogation centers there, and claims that both countries had served as transfer points for prisoners en route to detention centers where they faced torture and indefinite detention. This too was left out, despite its prominence in the national and international media. Official inquiries were initiated in both countries.
- In Spain, a Spanish judge will investigate whether the Son Sant Joan airport in Majorca was used by the United States as a base to transport secret detainees. The measure was announced by Interior Minister José Antonio Alonso on November 15. The Council of Europe investigation has noted that the same aircraft that transported Abu Omar after his abduction in Italy “landed at least three times in Spain (and in other European countries).”
- In Sweden, the government has requested that civil aviation authorities follow up press reports that aircraft suspected in the international transfer of prisoners had landed at Swedish airports in the last three years.
- In Switzerland, following parliamentary inquiries, authorities are reportedly investigating charges that U.S. aircraft used for secret prisoner transfers had violated Swiss sovereignty and international law, landing in Geneva in 2003-2004.

- In the United Kingdom, an all-party parliamentary group on "extraordinary renditions" was formed in December to seek information, concerned that the United Kingdom "might be condoning torture." Civil liberties groups called for inquiries into reports that ten specific airports had been used for prisoner transfers.

These developments were on the front pages of newspapers in Europe for much of last year. But they are completely absent from the Reports on these countries. This creates the impression that the United States has a blind spot for violations that it may have encouraged or in which it may have played an active role. In an interesting contrast, one case of apparent "rendition," in which the United States was *not* alleged to be involved, does appear in the reports. In the chapter on Egypt, under the heading "disappearances," the Report notes that Retired Brigadier Ahmed Salem Ebeid, a Yemeni government cabinet minister, who had "disappeared from his Cairo residence in February 2004," had reportedly been confirmed "to be residing in Yemen under house arrest, forbidden by the Yemeni government to have contact with the media."

V. Translation of the Reports

One important advance in recent years has been that the Reports are increasingly being translated into the principle languages of the countries covered. We have long argued that, if made easily available, official translations of the Reports would be widely read on the Internet, and would serve as an antidote to misleading unofficial translations and reporting. Accessibility of the reports in native languages will also increase their usefulness to local human rights NGOs in pressing their own governments to improve their human rights records.

There has been significant progress made towards this goal. Last year, the Department of State required all embassies to translate their country's Report into the official language of the host country. This was a welcome development, although the utility of the effort was somewhat blunted by what in some instances was a significant delay of time in getting translations completed. This year, all U.S. Embassies have been instructed to post official translations of their Country Reports within 30 days of publication of the English version. It appears, however, that only a selection of translations of country entries are published on the main Department of State website. This omission should be remedied. It is strongly in the interests of the United States for people around the world to be able to read what the U.S. Government is saying about the human rights record of their own governments. We urge that sufficient funding be provided to the Department to ensure that by next year, anyone who wants to read the Reports in their native language can access an official U.S. Government translation through the main State Department website. We also would encourage the Department to track the accessibility of the translated Reports to ensure that this information is not being blocked by government censors or web filters.

CONCLUSION AND RECOMMENDATIONS

Any critique of the Country Reports must be tempered by a recognition of the strengths of the process that has developed over the years to produce these annual reports, and the high quality of most of the information compiled and reported therein. It is in this spirit that we offer

our insights and recommendations, which we hope will contribute to making the Reports more useful tools for decision makers in the future. We recommend that:

- This Committee should review the guidelines for drafting the Country Reports before they are distributed to drafters, in order to ensure that they encourage complete and objective reporting and do not encourage omissions;
- Guidelines for the Country Reports on human rights practices should require an assessment of the human rights implications of states of emergency and emergency legislation;
- Guidelines should expressly require coverage of human rights violations occurring in the context of counterterrorism measures or in the name of the global war on terrorism;
- Guidelines should require reporting of new legislative or executive measures that suspend particular human rights;
- Guidelines for reporting on killings in conflict by state agents should require this to include coverage of the actions of civilian militias or paramilitary forces that are supported or acquiesced in by any level of government;
- Guidelines should require coverage of deliberate attacks on civilians by non-state actors, including groups identified by the Department of State and/or the U.N. Security Council as terrorist organizations;
- Guidelines for reporting on forcible disappearances should be revised so that such acts by state agents are not conflated with common kidnappings and the disappeared are not described simply as people who are missing or unaccounted for;
- Guidelines should require improved coverage of the human rights consequences of immigration control measures;
- Review the use of the passive voice in some country reporting as a factor that may insulate governments from responsibility for the actions of official forces;
- Congress should provide sufficient funds to permit the DRL to provide translations of the Country Reports and require that these translations be made easily available on both Department of State and relevant Embassy websites.

Thank you.